

DELIVERED ELECTRONICALLY
AND BY HAND

October 25, 2011

Ms. Stephanie Schardin Clarke, Interim Director
New Mexico State Board of Finance
181 Bataan Memorial Building
Santa Fe, NM 87501

**Re: Approval of Master Ground Lease Executed by the State Fair Commission,
as Lessor, and The Downs at Albuquerque, as Lessee**

Dear Ms. Schardin-Clarke:

By this letter, the State Fair Commission (the "State Fair") requests the approval by the State Board of Finance of the lease of real property by the State Fair Commission, as Lessor, to the Downs at Albuquerque, Inc. ("Downs"), as Lessee pursuant to a Lease Agreement attached to this letter as Attachment 1 (the "Lease Agreement"). This application is submitted pursuant to Section 13-6-2.1 NMSA 1978 and Sections 1.5.23.10 and 1.5.23.11 NMAC.

The reason for leasing and the selection process by which State Fair selected the lessee are as follows. The State Fair has selected Downs to enter into the Lease Agreement with the State Fair pursuant to a Request for Proposals for a Race Track and Casino Operation or for Alternative Uses, dated July 24, 2011 (the "RFP"). The RFP sought proposals for the leasing of certain portions of the State Fair Grounds (the "Fairgrounds") in the City of Albuquerque. The Downs responded to the RFP by proposing to operate the Race Track and Casino, and did not propose an alternative use for the site. In the Downs proposal (the "Proposal") and the resulting Lease Agreement, Tenant proposes to construct a new 50,000 square foot +/- building and related improvements, including paved parking areas, fencing, driveways, utilities, storm drainage and retention and landscaped areas. See Lease Agreement, Section 10.2, pp. 13-14.

As determined by the Leasehold Valuation Analysis of Joel White, MAI, of CB Richard Ellis, Albuquerque (the "Valuation Analysis"), the rent payable pursuant to the Lease Agreement is at least at a market rate. In reaching that conclusion, the Valuation Analysis determined that the operation of a racino by a licensed operator will generate a higher rent amount than any other commercial or industrial use of the property, and that the \$2,000,000 annual base rent constitutes a share of the income projected to be generated by the Downs' operation of the property which is at the upper end of the range of comparable leases.

As additional consideration, in addition to the rent payable in the first year of the Lease, the Downs has offered to waive claims against the State Fair for major repairs to HVAC units,

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replacement of the Grandstand roof, electrical system and elevator malfunctions, plumbing and drainage problems. The Downs has quantified those claims as being in the range of \$1,300,000 to \$1,900,000.

Attached to this letter are the following tabbed attachments:

1. The Lease Agreement, which is scheduled for approval by the State Fair Commission on November 8, 2011. Copies of the executed Lease Agreement and the State Fair Commission resolution approving the Lease will be provided to you immediately after the State Fair Commission has approved the Lease Agreement.

2. The Leasehold Valuation Analysis of Joel White, MAI, of CB Richard Ellis, Albuquerque.

The other material terms of the Lease Agreement are summarized below.

Other Material Terms of the Lease Agreement.

1. Use of Premises.

A. Primary Use. The primary use of the Premises shall be for a race track and casino, including but not limited to gaming, horse racing, pari-mutuel wagering, simulcast racing, a food court, a restaurant and bar, and other normally associated uses. *See Lease Agreement, Section 3.1.*

B. Exclusive Use. The Tenant shall have the exclusive right to use the Fairgrounds for gaming, including various gaming activities as defined in the Gaming Control Act (Sections 60-2E-1 through 60-2E-62 NMSA 1978, as amended) and for pari-mutuel wagering, horse racing, racing meets, stake racing and simulcast wagering, as defined in the Horse Racing Act (Sections 60-1A-1 through 60-1A-30 NMSA 1978). *See Lease Agreement, Section 3.2.*

C. Exceptions to Exclusive Use by Tenant. Landlord is permitted to conduct pari-mutuel horse racing at the Premises during the Landlord's permitted racing at the Premises pursuant to the Landlord's Racing License. *See Lease Agreement, Section 3.2 and Sections 2.4 and 2.5* (describing grant of secondary use of Barns and Landlord's Reserved Rights to use portions of the Premises for one month as permitted by its Racing License).

D. Landlord reserves the right to use of the portion of the Racing Facilities, excluding the Casino, required to conduct a live horse racing meet ("State Fair Meet") of not more than seventeen (17) days a year pursuant to the State Fair License. Tenant agrees that, if requested by the Landlord, and if consistent with law, Tenant will conduct the State Fair Meet pursuant to the State Fair Racing License. *See Lease Agreement, Section 2.6.*

E. Use of the Infield.

(1) Tenant is permitted to use the Infield, including the Access Tunnels. Tenant Landlord shall ensure that the Infield is continuously maintained for its use contemplated within this Lease.

(2) The use of the Infield shall be primarily for parking which shall be on a "first-come" "first-serve" basis and for vehicular and pedestrian access to the Infield.

(3) From time to time, and as agreed upon by the parties, Tenant may use the Infield for purposes other than parking as long as said use does not conflict with Landlord's need to use the Infield for parking during the fair and other Landlord sponsored events.

(4) Landlord shall have the right to charge for parking at the Infield during periods and events that are being held by Landlord at the Fairgrounds. Tenant shall not have the right to charge for parking at the Infield except during Tenant's sponsored events as provided in Section 3 and Section 4.3 of the Lease.

(5) Except during the days when the State Fair is open and any other major event sponsored by the Landlord that will likely fill the Infield, Landlord agrees that it will not charge for at least 300 designated parking spaces located within the southern portion of the Infield (as shown in Exhibit "L") to be used exclusively by Tenant and its employees, patrons, invitees and licensees who can be identified to the Landlord's parking attendants by decals on their automobiles, or some other mechanism acceptable to the Landlord.

(6) Tenant shall have the right to construct, at Tenant's sole expense, a new Access Tunnel for pedestrian and/or vehicle access under the south end of the Race Track from the Infield to the New Building.

(7) Landlord reserves the right to construct temporary improvements within the Infield for the use by Landlord, and its tenants or licensees that will not interfere with Tenant's use of the Premises. Landlord is not permitted to construct permanent improvements within the Infield. Landlord Infield Improvements shall be subject to the following:

See Lease Agreement, Sections 3.3 and 3.4.

2. Lease Term. The Term commences upon Tenant's receipt of a final certificate of occupancy (the "Commencement Date") and expires on last day of the 300th month from the first day of the calendar month following the Commencement Date. *See Lease Agreement, Section 5.1.* No renewal term is contemplated absent legislation authorizing. *Id.*, Section 5.4.

3. Rent.

A. Tenant will pay minimum annual rent of \$2,000,000 in monthly installments of \$166,666.67. *See Lease Agreement, Section 6.1*

B. In addition to base rent, Tenant will pay Landlord Participation Rent based on a share of Tenant's gross revenues from slot machine gaming ("Maximum Available Participation Rent"), from which the prior year's Live Racing Net Losses incurred by Tenant are deducted. The Maximum Available Participation Rent is as follows:

Gross Revenues from Slot Machine Gaming in Excess of:	Maximum Available Participation Rent
\$43,800,000.00	\$300,000.00
\$47,085,000.00	\$550,000.00
\$50,370,000.00	\$1,000,000.00
\$60,000,000.00	\$1,300,000.00

The Maximum Available Participation Rent per year shall be offset by Tenant's Net Live Racing Loss. Tenant's right to offset shall be limited and Tenant shall only be allowed to offset five hundred thousand (\$500,000) of its Net Live Racing Loss against Maximum Available Participation Rent.

See Lease Agreement, Section 6.2.2.

C. If Tenant fail to pay when due any installment of Base Rent or Participation Rent to Landlord under the Lease within ten (10) days following written notice from Landlord, then Landlord shall assess a late fee in the amount of one percent (1%) of the amount of any late rent payment. In the event that Tenant fails to pay any Base Rent, Participation Rent, or Late Fee within thirty days after Landlord provides Tenant with a Default Notice as contemplated within this Lease, all unpaid amounts shall accrue interest at the Default Rate, as defined herein, until paid, in full. *See Lease Agreement, Section 6.3.*

4. Net Lease. The Lease is a triple net lease. Tenant will not be entitled to abatement, reduction, set-off, counterclaim, defense or deduction with respect to Base Rent or other sum payable except as specifically provided in the Lease Agreement. *See Lease Agreement, Section 6.4.*

5. Utilities. Tenant will pay all charges for gas, electricity, communication services, water, refuse, sanitary sewer, storm sewer in connection with the Premises. If any such utilities are not separately metered to the Premises, the Tenant may, in its sole discretion and at its expense, cause all utilities to be separately metered. Tenant shall bear the cost of any relocation or replacement of utility lines and related improvements necessitated by Tenant's construction or separate metering activities. Landlord shall, on or before the 2012 live race meet, cause the water for the Barns to be separately metered. *See Lease Agreement, Section 9.1.*

6. Improvements. The Lease Agreement identifies certain improvements that Tenant may remove in a manner which does not damage the structural integrity of the remainder of the grandstand improvements. *See Lease Agreement, Section 10.1.* Tenant shall construct a 50,000 square foot building, subject to Landlord's review, which shall commence within 180

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days of approval of the Final Plans. Tenant shall commit a minimum of \$200,000 toward the cost of a new entry drive on Central Avenue between Florida and Indiana (the "New Entrance"). *Id.*, Section 10.2.

7. Lease of Premises "As Is;" Tenant responsibility for all licenses, permits and regulatory approvals, environmental and soils testing, title searches.

A. Tenant accepts the Premises in its present condition, with absolutely no representations or warranties by Landlord concerning the condition of the Premises.

B. Tenant or its affiliate has been in possession of the Premises and is aware of various specified defects in the Improvements.

C. Except as expressly described in the Lease Agreement, Tenant is responsible for all repairs, permits, meter costs, construction expenses, approvals and costs required for the use, occupancy, development and operation of the Premises in accordance with applicable governmental requirements.

D. The Lease is not contingent upon Tenant obtaining any permits related to the New Entrance and/or the Traffic Signal.

E. If Tenant is unable to obtain the necessary permits, licenses, variances and approvals related to the New Entrance and the Traffic Signal, Landlord and Tenant shall meet and discuss alternatives, but the Lease shall not terminate. *Lease Agreement, Sections 10.3-10.7.*

8. Alterations. During the term of the Lease, Tenant may alter or renovate existing improvements and construct additional improvements so long as the fair market value of the New Building is not decreased as a result. *Lease Agreement, Section 10.8.* Tenant is also responsible for paying all costs of repairs and maintenance of the Premises. *Id.*, Section 12.1.

9. Mechanics' Liens. Tenant has no right to bind Landlord or encumber Landlord's interest in the Premises for any claim for labor or material, and is obligated to promptly bond for or discharge such liens. *Lease Agreement, Section 10.9.*

10. Ownership of Improvements. All Improvements will be solely the property of Landlord, but Tenant may remove all trade fixtures, movable equipment, furniture, furnishings and personal property upon expiration or earlier termination of the Lease. *Lease Agreement, Section 10.10.*

11. Hazardous Materials. Neither Landlord nor Tenant will dispose of or generate Hazardous Materials (as defined in any applicable federal, state or local law) on the Premises. The Parties acknowledge that animal excrement will accumulate on the Premises and shall be disposed of expeditiously, and on that condition shall not be considered Hazardous Materials. The Parties' covenants shall survive termination of the Lease. *Lease Agreement, Sections 11.1.1-11.1.4.*

12. Insurance.

A. Tenant is obligated to pay for and maintain in force at all times during the Term of the Lease the policies of insurance listed below. Tenant is obligated to require all subtenants, licensees and others conducting business on the Premises to obtain property damage, vehicle, commercial/public liability, worker's compensation (when applicable) and Liquor Liability Insurance (when applicable) or, when allowed by Tenant's policy, to insure such people or entities under Tenant's policies. Neither the State of New Mexico nor Landlord shall be liable for the payment of any premiums, assessments or deductions on any insurance required in the Lease. *See Lease Agreement, Section 13.1.*

B. All insurance coverage required by the Lease shall be issued by companies licensed to do business in New Mexico that are satisfactory to Landlord. *Id.*, Section 13.2.

C. Tenant is required to provide to Landlord evidence of all insurance policies required under the Lease showing (1) the amounts and types of coverage and the dates of inception and expiration of the insurance and (2) endorsements, riders or other amendments to each insurance policy showing Landlord as an additional insured and providing that each additional insured shall receive thirty (30) days advance written notice of cancellation or material alteration of the insurance policy, with ten (10) days' notice for non-payment of insurance premiums or provide the insurance policy that shows that Landlord is an additional insured and entitled to such notice due to the provisions contained in the Lease (other than in connection with worker's compensation insurance, for which Landlord need not be named as an additional insured). *Id.*

D. Proof of the insurance coverage required in the Lease shall be provided by Tenant to Landlord prior to the beginning of each Lease Year or upon the annual renewal of each policy. *Id.*

E. Insurers shall waive their subrogation rights as to vehicle and commercial/public liability insurance. *Id.*

F. Coverage Required. The Lease requires that Tenant obtain the following types of coverage:

(1) Real Property Damage. Insurance coverage for the buildings, structures and other Improvements on the Premises, including the Improvements constructed by Tenant during the Term of the Lease, against loss or damage by fire and extended coverage insurance and vandalism and malicious mischief insurance on the Premises, including, but not limited to, the grandstand, the paddock area and all other buildings and structures used for or in connection with the activities Tenant is allowed to conduct under the provisions of the Lease, in an amount equal to the replacement costs of such buildings and structures and any fixture appurtenant thereto, with such replacement costs to be determined by the insurance carrier prior to the commencement or renewal of each insurance policy. The insurance shall have a replacement cost endorsement or similar provision which shall be an amount equal to the actual

replacement value (exclusive of cost of excavation, foundations, and footings, below the surface of the ground or below the lowest basement level). Tenant's insurance shall insure against other insurable hazards which at the time are commonly insured against in the case of improvements similarly situated, due regard being given to the height and type of the improvements, their construction, location, use, and occupancy. *Lease Agreement, Section 13.3.*

(2) Tenant Personal Property Insurance. Insurance covering losses to Tenant's personal property located on the Premises, including removable trade fixtures to which Tenant retains ownership or improvements that Tenant may remove and own as provided in the Lease. *Id., Section 13.4.*

(3) Vehicle Coverage (auto liability). Coverage for all vehicles (whether or not licensed to operate on public right-of-way) operated in, on or onto the Premises by Tenant in the amount of one million dollars (\$1,000,000.00)] for any number of persons in any one accident or occurrence and five million dollars (\$5,000,000) in the aggregate. *Id., Section 13.5.*

(4) Commercial or Public Liability Insurance. Comprehensive general liability insurance, commercial or public liability insurance, including contractual liability and completed operations liability, with limits of not less than one million dollars (\$1,000,000) with respect to bodily injury or death to any number of persons in any one accident or occurrence and at least five million dollars (\$5,000,000) in the aggregate and in the amount of at least one million dollars (\$1,000,000) covering property damage in any one accident or occurrence and one million dollars (\$1,000,000) in the aggregate. Upon the request of Landlord, Tenant shall increase, at Tenant's cost, the limits on each accident or occurrence as to property damage in an amount based on property damages incurred since the commencement of the Term. *Id., Section 13.6.*

(5) Liquor Liability Insurance. Tenant and its subtenants or others occupying the Premises who serve, dispense and/or sell alcoholic beverages on the Premises or from the Premises shall obtain Liquor Liability Insurance policies, an Alcoholic Beverages Purveyor's Insurance policy or the equivalent thereof, in the amount of one million dollars (\$1,000,000) for each occurrence and five million dollars (\$5,000,000) in the aggregate. *Id., Section 13.7.*

(6) Workers Compensation. Tenant agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the Tenant fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Lease may be terminated by the Landlord. Tenant shall provide to Landlord a documentation showing that it is currently in compliance with the Workers Compensation Act. *Id., Section 13.8.*

(7) Builders Risk. Tenant shall obtain or cause its construction contractor to obtain builders risk insurance covering the entire value of construction of the New Improvements on the Premises. Such insurance shall be obtained and proof thereof provided to

Landlord prior to commencement of any construction of the New Improvements. *Lease Agreement, Section 13.9.*

(8) Deductibles. Tenant shall be responsible for payment of the full amount of any deductible due under the insurance policies required in this Section. In no event shall the deductible feature only insurance policy exceed one hundred thousand dollars (\$100,000) for property damage and twenty-five thousand dollars (\$25,000) for personal injury coverage. *Id., Section 13.10.*

13. Tenant's Indemnification of Landlord. Tenant is obligated to defend and indemnify Landlord against any claims arising from injury to or death of any person or loss of property on or about the Premises or adjoining property. *Lease Agreement, Section 14.1.*

14. Casualty; Eminent Domain.

A. Casualty. Tenant is obligated to restore any damaged or destroyed Improvements unless the damage or destruction involves more than 75% of the interior floor area of the Improvements during the last 3 years of the lease term. *Lease Agreement, Section 15.1.* If the estimated cost of restoration is greater than \$25,000, Tenant shall submit plans and specifications to Landlord for its input and provide copies of all permits, construction contract, evidence of builders' risk, general liability and workers' compensation insurance, and evidence of payment of all costs incurred in the restoration. *Id., Section 15.2.*

B. Eminent Domain. The Lease terminates if the entire Premises is taken by eminent domain, and any compensation paid will be distributed first to the payment of all reasonable fees and expenses incurred by Tenant in collecting the compensation; second to Tenant or a permitted lien holder for any improvements made by Tenant to the extent of the depreciated cost of such improvements, third to Tenant for any personal property taken; fourth to Landlord or any creditor or claimant other than Tenant. *Lease Agreement, Section 16.1.*

The Lease will not terminate in the event of a partial taking unless, in Tenant's reasonable judgment, it is economically unsound to utilize the remainder of the Premises for the purposes contemplated by the Lease, in which case the Lease will terminate. If the Lease is not terminated, Base Rent will be reduced to the extent fair and reasonable under the circumstances. *Lease Agreement, Section 16.2.* A temporary taking will not reduce the Term of the Lease, but the Base Rent payable for the unexpired portion of the Lease will be reduced to the extent fair and reasonable under the circumstances, and Landlord will be entitled to all compensation paid after payment of Tenant's reasonable attorneys' fees, costs and any damages. *Id., Section 6.3.*

15. Default and Remedies.

A. Tenant Default. The following events are Tenant Defaults under the Lease:

(1) failure by Tenant to pay Rent or other sums to Landlord or any third party under the Lease when due, which continues for 30 days after Tenant has received written notice (*Lease Agreement, Section 17.1*)

(2) failure to perform any other material obligation under the Lease, which continues for 30 days after Tenant has received written notice (*Id., Section 17.1.2*);

(3) an involuntary petition under any bankruptcy, insolvency or receivership law is filed against Tenant, which proceeding is not discharged or stayed within 60 days, or Tenant voluntarily assigns its assets for the benefit of creditors or files a voluntary petition for bankruptcy (*Id., Sections 17.1.3 and 17.1.4*);

(4) Tenant files for dissolution.

B. Landlord Remedies. Upon the occurrence of a Tenant Default, Landlord may take any or all of the following actions:

(1) Terminate the Lease and take possession of the Premises (*Lease Agreement, Section 17.2.1*);

(2) Terminate Tenant's right to possession of the Premises while leaving the Lease in effect, operating the Premises and collecting the rents and profits for the account of Tenant and credit the rent received, less Landlord's costs of repossession and operation of the Premises, to the satisfaction of Tenant's obligations (*Id., Section 17.2.2*).

(3) Collect all sums which were due prior to termination of the Lease and which would come due until what would have been the expiration of the Lease. (*Id., Sections 17.2.3*).

C. Tenant Remedies for Landlord Default.

(1) Landlord defaults include its failure to perform its obligations under the Lease for a period of 30 days after written notice of failure from Tenant (*Lease Agreement, Section 17.3.1*); the filing of either an involuntary or voluntary petition or assignment of property for the benefit of creditors under any bankruptcy, insolvency or receivership law against or by Landlord (*Id., Sections 17.3.2 and 17.3.3*); or the granting of rights to any other party to conduct gaming on the Premises (*Id., Section 17.3.4*).

(2) Tenant's remedies include the following rights: (AA) to perform Landlord's obligation and to deduct the cost of such performance from rent (*Id., Section 17.4.1*); (BB) to terminate the Lease, in which event, in addition to any and all damages available to Tenant resulting from Landlord's Default, Landlord shall pay Tenant the value of the all New Improvements, including the New Improvements, Tenant has constructed on the Premises (*Id., Section 17.4.2*); and to obtain injunctive and other equitable relief to enforce its rights (*Id., Section 17.5*).

16. Assignment, Subletting and Concessions.

A. Transfer of Landlord's Interest. With the exception of Landlord's right of eminent domain, Landlord may freely transfer and/or mortgage its interest in the Premises under the Lease from time to time and at any time, provided that any such transfer or mortgage is expressly made subject to the terms, provisions, and conditions of the Lease, and the transferee or mortgagee agrees to be bound by the provisions hereof (in the case of a mortgagee, such agreement being contingent upon the mortgagee actually succeeding to Landlord's interest in the Premises and the Lease as a result of foreclosure or conveyance in lieu thereof). *Lease Agreement, Section 18.1.*

B. Tenant's Right To Assign or Sublet. Tenant may assign its rights under the Lease or sublet the Premises with Landlord's prior written approval, which shall not be unreasonably withheld, provided that (i) Tenant will remain liable for all liabilities and obligations arising under this Lease in the event of a sublease, (ii) the proposed assignee is an experienced and financially sound operator of casinos, race tracks and pari-mutuel wagering, and reasonably acceptable to Landlord, and (iii) the proposed assignee has all of the required licenses to operate the race track, casino and bar. Landlord consents to an assignment of the Tenant's interest in the Lease to an entity having substantially the same ownership and management as Tenant. *Lease Agreement, Section 18.2.*

C. The Lease does not prohibit Tenant from granting concessions for the operation of one or more of the business activities permitted under this Lease, provided that:

(1) Each concession granted by Tenant shall be subject to all of the terms and provisions of the Lease;

(2) Unless all of Tenant's rights under the Lease are assigned to a third party, all pari-mutuel horse race wagering and gaming conducted under the Lease shall be conducted under the direct supervision and management of Tenant and shall not under any circumstances be conducted by any other person or concessionaire.

Lease Agreement, Sections 18.2.1 and 18.2.2.

17. Tenant's Right to Encumber. Tenant has the right, from time to time and at any time, with Landlord's prior approval, not to be unreasonably withheld or delayed, to encumber its interest in the Lease with one or more lien instruments to secure any borrowings or obligations of Tenant. *Lease Agreement, Section 21. 1.*

Stephanie Schardin Clarke
October 25, 2011

Should you have questions or need additional documentation, please feel free to contact me.

Very truly yours,

Dan Mourning,
Manager of the New Mexico State Fair